

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH

Petitioner,

v.

CLARENCE SCOTT
Respondent

Case Nos.: I-00-20345
I-00-20235
I-00-20368
I-00-20271
(Consolidated)

FINAL ORDER

I. Introduction

These cases involve alleged violations of 22 DCMR 700.3, which requires solid wastes to be stored or containerized in a manner that does not provide food, harborage or breeding places for rodents. The properties at issue are located across the street from each other, and Respondent Clarence Scott owns both of them. Due to the identity of the parties and of many of the factual and legal issues, I have consolidated the cases for decision.

On January 8, 2002, the Government served a Notice of Infraction (No. 00-20345) alleging that Mr. Scott violated § 700.3 at 1705 Capitol Avenue, N.E., on January 8, 2002.¹ On January 25, 2002, the Government served a Notice of Infraction (No. 00-20368) alleging another violation of § 700.3 against Mr. Scott at 1704 Capitol Avenue, N.E., on January 9, 2002. Each Notice of Infraction sought a fine of \$1,000.

¹ The date of infraction stated on the Notice of Infraction is January 8, 2001. At the hearing, Mr. Scott consented to the Government's motion to amend the date to January 8, 2002, and I granted that motion.

Mr. Scott did not file an answer to either Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e), 2-1802.05). Accordingly, this administrative court issued orders finding him in default in each case and subject to the statutory penalty of \$1,000 required by D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f).² The orders also required the Government to serve a second Notice of Infraction for each alleged violation.

The Government served the second Notice of Infraction for 1705 Capitol Avenue (No. 00-20235) on February 21, 2002 and the second Notice of Infraction for 1704 Capitol Avenue (No. 00-20271) on March 5, 2002. Mr. Scott also did not answer those Notices within twenty days of service. Accordingly, on April 16, 2002, Final Notices of Default were issued, finding Mr. Scott in default on the second Notices of Infraction and subject to total statutory penalties of \$2,000 for each property pursuant to D.C. Official Code §§ 2-1801.04(a)(2)(B) and 2-1802.02(f). The Final Notices of Default also set May 14, 2002 as the date for an *ex parte* proof hearing, and afforded Respondent an opportunity to appear at that hearing to contest liability, fines, penalties or fees. Copies of both the first and second Notices of Infraction were attached to the Final Notices of Default.

On May 14, the Government, represented by Nathaniel Hill, the inspector who issued the Notices of Infraction, appeared for the hearing. Mr. Scott appeared on his own behalf and entered pleas of Admit with Explanation to each of the charges. Based upon the testimony at the hearing, my evaluation of the credibility of the witnesses and the entire record in this case, I now make the following findings of fact and conclusions of law.

² The order for 1705 Capitol Avenue was issued on February 13, 2002, and the order for 1704 Capitol Avenue was issued on February 28, 2002.

II. Findings of Fact

A. 1705 Capitol Avenue

Mr. Scott owns a four-unit apartment building at 1705 Capitol Avenue, N.E. On January 8, 2002, trash was stored in plastic bags in the back yard of that building in overflowing trash cans and on the ground nearby. Mr. Scott's plea of Admit with Explanation establishes that the trash provided food, harborage or breeding places for rats. The back yard borders upon a public alley, and most of the trash at issue was deposited into the back yard by neighbors or passersby. Mr. Scott has made arrangements for a locked dumpster to be placed in the yard in order to better contain his tenants' waste and to discourage dumping by trespassers. He has accepted responsibility for the violation and there is no evidence that he has a history of prior violations.

B. 1704 Capitol Avenue

Mr. Scott also owns a four-unit apartment building at 1704 Capitol Avenue, N.E. On January 9, 2002, plastic bags of trash were piled in a public alley adjacent to that property. Most of the trash was on the ground, although some of it was in two uncovered trash cans. Based upon Mr. Scott's testimony, which I find credible, I find that squatters living in a vacant building next door placed the trash there and that the trash generated by the building's tenants was stored on-site in cans. Although Mr. Hill did not testify, he submitted photographs of the offending trash for the record. Those photographs were admitted into evidence on Respondent's motion, and they depict only the trash in the alley, not any trash on Mr. Scott's property.

C. The Failure to Respond to the Notices of Infraction

Based upon the certificates of service, I find that the Notices of Infraction were mailed to Mr. Scott at the addresses of his respective properties, *i.e.*, to 1704 and 1705 Capitol Avenue, N.E. Mr. Scott does not live at either address. He testified credibly that he did not receive the Notices of Infraction, and the Government did not contest his testimony or offer any contrary evidence. The default orders issued on February 13 and February 28 both were returned to the Clerk's Office by the Postal Service, with the notation "AUK," which I understand to mean "addressee unknown." Mr. Scott received a copy of at least one of the Final Notices of Default from a tenant at one of the properties who received it from the Postal Service and then held it for Mr. Scott.

III. Conclusions of Law

A. 1705 Capitol Avenue

The regulation at issue provides:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

21 DCMR 700.3.

Mr. Scott's plea of Admit with Explanation establishes that he violated 21 DCMR 700.3 at 1705 Capitol Avenue, N.E. on January 8, 2002. The Rodent Control Act of 2000 classified a violation of § 700.3 as a Class 1 infraction, which is punishable by a fine of \$1,000 for a first

offense.³ 16 DCMR 3201. Disposal of the offending trash at the property by neighbors or passersby does not excuse or mitigate the violation, as § 700.3 imposes strict liability upon an owner of property where a violation occurs, regardless of the source of the offending waste. *Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202 (D. C. 1995). *See DOH v. Young*, OAH No. I-00-20332 at 3-4 (Final Order, March 12, 2002) (“The purpose of § 700.3 and the increased fines enacted by the Rodent Control Act of 2000 is to give property owners a greater motivation to take all necessary steps to control conditions that can lead to an increase in the rat population.”) Nevertheless, Mr. Scott’s acceptance of responsibility, his efforts to prevent future violations and his lack of a history of prior violations warrant a reduction of the fine, which will be set at \$500.

B. 1704 Capitol Avenue

Mr. Scott’s plea of Admit with Explanation establishes that he violated § 700.3 on January 9, 2002 at 1704 Capitol Avenue, N.E. The offending trash also was deposited by neighbors or passersby, but there is a critical difference between this matter and the one across the street. Here, the trash that violated § 700.3 was not located on Mr. Scott’s property but in a public alley next to that property. Although § 700.3 imposes strict liability upon any person who stores or containerizes wastes improperly (including the owner of the property where the wastes are located, as in *Bruno, supra*,) nothing in the language of that section imposes any obligation upon a property owner for wastes disposed of by others on adjacent public space. When the law has imposed an obligation upon property owners to take some action to protect adjacent public

³ The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. *See* 47 D.C. Reg. 8962 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

space, it has done so explicitly. *See, e.g.*, D.C. Official Code § 9-601 (requiring property owners to remove snow or sleet from sidewalks in front of, or abutting, their property). The absence of any such explicit language from § 700.3 leads to the conclusion that a property owner does not violate that section if wastes are stored or containerized improperly in an adjacent public alley by others.⁴ *See Doe v. DiGenova*, 779 F.2d 74, 83 (D.C. Cir. 1985) (absence from one statute of specific term used in a similar statute indicates a difference in legislative intent).

Mr. Scott's plea of Admit with Explanation is sufficient to establish that he violated § 700.3 at 1704 Capitol Avenue, on January 9, 2002. The record demonstrates, however, that there would not be a legal or factual basis for finding him liable absent his plea. Therefore, I will suspend the fine applicable to the § 700.3 violation. D.C. Official Code § 2-1801.03(b)(6). *See, e.g., DOH v. Clark*, OAH No. I-00-20248 at 6 (Final Order, June 11, 2002); *DOH v. Mallios*, OAH No. I-00-20397 at 5 (Final Order, May 31, 2002); *DOH v. Multi Therapeutic Services, Inc.*, OAH No. I-00-40121 at 10-11 (Final Order, November 29, 2001).

C. The Failure to Answer the Notices of Infraction

The Civil Infractions Act, D.C. Code Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within twenty days of the date of service by mail. If a party does not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). If a recipient fails to answer a second Notice of Infraction without good cause, the penalty doubles. D.C. Official Code §§ 2-1801.04(a)(2)(B) and 2-1802.02(f). The evidence establishes that Mr. Scott did not receive the

⁴ The result may be different if the property owner has taken some affirmative action to encourage waste disposal on the adjacent public space, *e.g.*, by arranging for a dumpster to be placed there.

Notices of Infraction, as they were mailed to addresses that are neither his home nor business address. A Respondent who establishes that, through no fault of his own, he failed to receive a Notice of Infraction, has established good cause for not responding to it. *DOH v. Galeano's Trucking*, OAH No. I-00-11097 at 5 (Final Order, April 22, 2002). Therefore, I will not impose the statutory penalties in either case.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that, based upon his pleas of Admit with Explanation, Respondent violated 22 DCMR 700.3 on both January 8 and January 9, 2002, as alleged in the Notices of Infraction. A fine of \$500 will be imposed for the January 8 violation, but the fine for the January 9 violation shall be **SUSPENDED**; and it is further

ORDERED, that Respondent shall pay a total of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within twenty (20) calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/f/ 07/22/02

John P. Dean
Administrative Judge